

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

08/20/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-004801

FILED: _____

STEPHANIE STROMFORS

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1040 W 12TH ST
TEMPE AZ 85281-0000

v.

GEORGE R CUNNINGHAM

MICHAEL S SAMUELS

REMAND DESK CV-CCC
TEMPE JUSTICE CT-EAST

MINUTE ENTRY

This Court has jurisdiction over this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This court has taken this matter under advisement and reviewed the parties' Memoranda and the record from the Tempe Justice Court-East.

This case represents an appeal from an Injunction Against Harassment originally granted in Tempe City Court February 21, 2002 and affirmed by default March 6, 2002 after Appellant failed to timely appear. Appellee, however, was present when the court called the parties.

Appellant alleges that, because of his tardiness, the court would not allow him to participate in the proceedings.¹ Appellant

¹ Appellant's Memorandum, p. 2.

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further alleges he was late for the hearing, in part because Appellee had insisted that court officers search him for weapons, despite her knowledge that he does not carry a weapon.² Appellee, on the other hand, alleges that Appellant has carried a firearm, lending support for the court authorized weapons search.³

The parties ordinarily are expected to appear at the time scheduled by the court. The record indicates that the court had received no word from Appellant that he would be late. Furthermore, the record indicates that Appellant had not appeared by the time the court handed down its ruling and began its next case. Consistent with Rule 55(a), Arizona Rules of Civil Procedure, "[a] default judgment obtains when a defendant fails to plead or otherwise defend."⁴

An appellate court may only consider legal questions presented by the record.⁵ When matters are not included in the record on appeal, the evidence is presumed to support the decision of the lower court.⁶ Here, the record contains no support for Appellant's contentions that the court denied him the opportunity to present his case, reveals no error.

IT IS THEREFORE ORDERED affirming the order of the East Tempe Justice Court.

IT IS FURTHER ORDERED remanding this matter to the East Tempe Justice Court for any and all further matters associated with this case.

² Appellant's Memorandum, p. 2.

³ Appellee's Memorandum, p. 2.

⁴ Coulas v. Smith, 96 Ariz. 325, 328; 395 P.2d 527, 529 (1964).

⁵ Orlando v. Northcutt, 103 Ariz. 298, 441 P.2d 58 (1968); Smith v. Smith, 115 Ariz. 299, 564 P.2d 1266 (App. 1977).

⁶ State v. Mendoza, 181 Ariz. 472, 474, 891 P.2d 939, 941 (1995); Baker v. Baker, 183 Ariz. 70, 72, 900 P.2d 764, 766 (1995); State v. Zuck, 134 Ariz. 509, 513, 658 P.2d 162, 166 (1982); In re Mustonen's Estate, 130 Ariz. 283, 284, 635 P.2d 876, 877 (App.1981).